



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2011 Biennium

<b>Bill #</b>	SB0465	<b>Title:</b>	Clarify ownership of streambeds concerning property taxation
<b>Primary Sponsor:</b>	Hamlett, Bradley	<b>Status:</b>	As Amended

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact     | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns   |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts           | <input type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
<b>Expenditures:</b>				
General Fund	\$140,251	\$78,338	\$80,296	\$82,304
<b>Revenue:</b>				
General Fund	\$93,838	\$46,919	\$46,919	\$46,919
State Special Revenue	\$5,894	\$2,947	\$2,947	\$2,947
<b>Net Impact-General Fund Balance:</b>	<u>(\$46,413)</u>	<u>(\$31,419)</u>	<u>(\$33,377)</u>	<u>(\$35,385)</u>

**Description of fiscal impact:** The estimated revenue impact from provisions of SB 465 is an increase to general fund property tax revenue of \$93,800 and an increase in state special revenue for the university system of \$5,894 in FY 2010. In subsequent years general fund revenue will increase by \$46,919 and state special revenue for the university system by \$2,947. The Department of Revenue would ask for 1.0 new FTE and incur \$101,308 in costs in FY 2010 to collect taxes based on revised assessments. There are a number of technical concerns with the bill, some with potential fiscal impact. There is a fiscal impact to local governments. The Department of Administration would also incur \$38,900 of costs in FY 2010 to pay for additional appeals related to SB 465.

### FISCAL ANALYSIS

#### Assumptions:

#### **Department of Revenue**

1. This bill revises the laws related to treatment of property consisting of the bed of navigable rivers and streams; provides for a reduction from grazing land before a reduction from irrigated land or non-irrigated land for property tax purposes; requires adjudication before navigability is determined and a collateral land exemption is applied; provides that in a dispute over the ownership of the bed of a river or stream a

presumption may not be made based on the tax status of the property; clarifies ownership of structures; and clarifies the ability to control noxious weeds. As amended, the bill appears to make the department's acreage determinations for property assessment purposes title determinative and provides that the department must provide specific notice regarding the basis for acreage determinations in any property assessment case.

2. In 2008, DOR reduced taxable acreage due to the navigable stream or river issue described in Section 1 of the bill. Given time and budget constraints, DOR took the reduction from the land use based on the highest value for the parcel. That reduction included 703 acres of tract land at a market value of \$13,093,854. All lands must be classified according to their use or uses and graded within each class according to soil and productive capacity (15-7-103, MCA). In total, this methodology reduced property tax bills for those affected property owners by \$225,006 in 2008.
3. Under the provisions of this bill the reduction in property tax bills in FY 2008 for affected property owners would have totaled \$1,664.
4. Therefore, the net increase for property owners will be \$233,343 under provisions of this bill in FY 2010 and future years.
5. The *Biennial Report, July 1, 2006 to June 30, 2008*, DOR, p. 126-127 shows average mills for tax year 2008 by taxing entity. Statewide assessed mills were 101.52, approximately 21.4% of average rural mills.
6. Therefore, of the \$233,343 net increase, approximately 21.4%, or \$49,866, would be allocated to the state.
7. State general fund receives revenue from 95 mills and 0.52 mills for the colleges of technology and the balance is state special revenue funds for the university system (6 mills).
8. Therefore, of the \$49,866 of state revenue, 93.6% or \$46,664 is general fund revenue ( $95/101.52 = 93.6\%$  and  $\$49,866 \times 93.6\% = \$46,664$ ) plus an additional 0.5% or \$255 in revenue for colleges of technology which is deposited in the general fund ( $0.52/101.52 = 0.5\%$  and  $\$49,866 \times 0.5\% = \$255$ ). Total revenue for the general fund is \$46,919 (\$46,665 + \$255).
9. Of the \$49,866 in state revenue, 5.9% or \$2,947 is state special revenue for the university system ( $6/101.52 = 5.9\%$  and  $\$49,866 \times 5.9\% = \$2,947$ ).
10. This bill is retroactive and applies to tax years beginning with 2008. This fiscal note assumes that if this bill is passed as written, in order to comply with the law the department of revenue will need to bill those taxpayers whose property tax bill was reduced in FY 2008 and FY 2009 due to the reduced acreage calculation. For purposes of this fiscal note it is assumed that all of the additional tax owed due to the retroactive change in methodology will be collected. These additional taxes are assumed to be collected in FY 2010.
11. This fiscal note assumes there is no growth in these additional revenues for future years. However, if the provisions of this bill do not take effect, the department expects that follow-up work will refine the 2008 general reduction based upon highest parcel value, thereby reducing future revenue generated by this bill.
12. SB 465 as amended: The department estimates that the cost of issuing revised assessments is \$13,970 for printing and mailing. That expense will be required to cover the costs of printing and mailing revised assessments for tax year 2008 and tax year 2009. The cost will be incurred in FY 2010.
13. SB 465 as amended: In order to support the additional legal assistance required for the property assessment division for the property adjudication activity, which may involve significant litigation, it is estimated an additional 0.50 FTE for an attorney and 0.50 FTE for a paralegal will be needed. Total personal service costs are \$62,946 in FY 2010 and FY 2011, and \$64,520 in FY 2012 and \$66,133 in FY 2013. Annual operating expenses associated with these positions are \$14,592 in FY 2010, \$15,392 in FY 2011, \$15,777 in FY 2012, and \$16,171 in FY 2013. One time only costs for office equipment and phone of \$9,800 will be incurred in FY 2010.
14. For purposes of this fiscal note, it is assumed that the structures referenced in the bill are exempt from taxation. Based upon this assumption, there are no significant administrative costs due to provisions relating to structures in this bill. If this assumption is not correct, then there will be significant administrative costs as a result of the work required to value the structures and also to identify ownership.

These costs are not known because under current law these structures are exempt and the department does not track them; however, they would be significant.

15. This bill is effective on passage and approval and applies retroactively to tax years beginning with 2008.

### Department of Administration

16. The department estimates 10,317 assessment codes would be impacted by this bill. It is assumed an average of ten assessment codes per landowner, or approximately 1,032 parcels. The department of revenue's goal for the 2009 reappraisal is to have no more than ten percent of impacted property owners file an appeal. Therefore, it is assumed there would be 103 appeals from passage of this bill. An appeal costs approximately \$225 to be heard by the county tax appeal boards: (\$225 X 103 = \$23,175).

17. Historically the State Tax Appeal Board (STAB) receives 25 percent of appeals filed by the county tax appeal boards. Estimated STAB appeal processing costs would be \$5,794 (\$23,175 X 25%).

18. One-day biennial training for the 224 county tax appeal board members and secretaries for mileage, honorarium, secretary salaries, meals and lodging would cost approximately \$9,399.

19. Postage and printing costs for dissemination of materials would cost approximately \$575.

20. Total cost of SB 465 to the department would be \$38,943.

	<u>Difference</u>	<u>Difference</u>	<u>Difference</u>	<u>Difference</u>
<b><u>Fiscal Impact:</u></b>				
<b>Department of Revenue</b>				
FTE	1.00	1.00	1.00	1.00
<b><u>Expenditures:</u></b>				
Personal Services	\$62,946	\$62,946	\$64,520	\$66,133
Operating Expenses	\$38,362	\$15,392	\$15,777	\$16,171
<b>TOTAL Expenditures</b>	<b>\$101,308</b>	<b>\$78,338</b>	<b>\$80,296</b>	<b>\$82,304</b>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$101,308	\$78,338	\$80,296	\$82,304
<b><u>Revenues:</u></b>				
General Fund (01)	\$93,838	\$46,919	\$46,919	\$46,919
SSR (02)-University System	\$5,894	\$2,947	\$2,947	\$2,947
<b>TOTAL Revenues</b>	<b>\$99,732</b>	<b>\$49,866</b>	<b>\$49,866</b>	<b>\$49,866</b>
<b>Department of Revenue</b>				
<b><u>Expenditures:</u></b>				
Personal Services	\$23,175	\$0	\$0	\$0
Operating Expenses	\$15,768	\$0	\$0	\$0
<b>TOTAL Expenditures</b>	<b>\$38,943</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$38,943	\$0	\$0	\$0
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	(\$46,413)	(\$31,419)	(\$33,377)	(\$35,385)
State Special Revenue (02)	\$5,894	\$2,947	\$2,947	\$2,947

**Effect on County or Other Local Revenues or Expenditures:****Department of Revenue**

1. The table below shows the estimated increases to revenue to the counties and other local entities due to provisions of this bill. The table assumes that the counties bill for additional TY 2008 taxes and collect the additional revenues from the revised assessment. The state share is included for completeness. No costs have been calculated for counties.

<b>Revenue Impact of SB 465</b>							
<b>Estimated Rural Mills and Revenue TY 2008</b>				<b>Estimated Revenue</b>			
	<b>Mills</b>	<b>Percent</b>	<b>Revenue</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>
State	101.52	21.4%	\$49,866	\$99,733	\$49,866	\$49,866	\$49,866
County	130.85	27.5%	\$64,273	\$128,546	\$64,273	\$64,273	\$64,273
Local schools	181.37	38.2%	\$89,088	\$178,177	\$89,088	\$89,088	\$89,088
Countywide schools	42.51	8.9%	\$20,881	\$41,762	\$20,881	\$20,881	\$20,881
Misc & Fire districts	18.80	4.0%	\$9,234	\$18,469	\$9,234	\$9,234	\$9,234
<b>Total</b>	<b>475.05</b>	<b>100%</b>	<b>\$233,343</b>	<b>\$466,686</b>	<b>\$233,343</b>	<b>\$233,343</b>	<b>\$233,343</b>

**Technical Notes:****Department of Revenue**

1. The following issues have been identified and need to be clarified, if appropriate. The bill should direct the department to address these issues in administrative rules:

**New Section 1: Findings**

2. It would be contrary to established practice and jurisdiction to provide (as in New Section 1, parts 4 through 8) that the department adjudicates title when it does property taxes. It may be simpler to provide the department's assessment of property taxes has no effect on and shall not be admitted in evidence in any quiet title action concerning ownership of navigable streams

**Section 2: Adjustment of taxes for formerly taxed property.**

3. The bill is unclear in the timing, methodology, venue and criteria for determining navigable streambed property. The department believes the determination of whether a river is deemed navigable is made by the Department of Natural Resources and Conservation, Legislative finding, or by court order. Section 2 provides direction to the Department of Natural Resources regarding that navigability determination. It requires an adjudication of the ownership of the bed of any river or stream.
4. In 2008, the department reduced taxable acreage due to the navigable stream or river issue described in Section 1 of the bill. Given time and budget constraints, the department took the reduction from the land use based on the highest value for the parcel. This approach was also chosen because it errs on the side of the taxpayer. All lands must be classified according to their use or uses and graded within each class according to soil and productive capacity (15-7-103, MCA). Under either the approach taken by the department in 2008, or the approach implied in this bill, it might be difficult for the department to defend the use of a "proxy" land use and value when the department knows what the actual acreage and land use is. Due to recent improvements in data, the department's GIS system identifies the current use and productivity of the current acreage, thereby permitting department personnel to more accurately apply the reduction to acreage caused by the navigable stream or river issue.

**Department of Natural Resources and Conservation**

5. New Section 1(6) requires a state agency to afford affected property owners both notice and an opportunity to be heard if a claim of change in ownership is involved. Page 1, lines 23 through 25 in the recitals to the bill indicates that a claim of change in ownership would occur where the department sought to control the bed of a navigable river or stream that had not been adjudicated to be navigable. The department maintains a list of navigable waterways in Montana for management purposes. This list is based on research commissioned by the State Board of Land Commissioners and conducted in 1986. The list identifies 34 rivers, streams, or lakes as navigable, based on the existence of historical evidence that the river, stream, or lake was used or was susceptible of being used for commercial purposes at statehood. Of these 34 waterways, nine have been adjudicated in court. The remaining navigable rivers, streams, or lakes that have not been adjudicated would require either adjudication proceedings or written notice to be provided to the riparian property owner prior to the state issuing a lease, license, or easement that conflicts with the property owner's use of their riparian lands.
2. In PPL Montana, LLC v. State of Montana, Cause No. CDV-2004-846 (2008), Montana First Judicial District Court, Judge Honzel declared that the beds of navigable waters are school trust lands. Section 4 of SB 465 allows persons to make use of state trust lands. For this use, the department would charge rents or issue easements for full market value compensation to common public schools, consistent with its fiduciary obligation.
3. For structures placed in the beds of navigable rivers without the permission of the department or State Board of Land Commissioners, section 4 of SB 465 potentially conflicts with 77-1-125, MCA, which prohibits the placement of structures on state lands by persons other than the lessee, and 70-18-101, MCA, which provides that fixtures, placed without permission upon land belonging to another person, belong to the owner of the land.
4. Section 9 prohibits a state oil and gas lessee from removing certain structures within navigable waters.

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*Sponsor's Initials*

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*Date*

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*Budget Director's Initials*

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